

**SAMPLE FINAL PRETRIAL ORDER**

**IN THE UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF OKLAHOMA**

IN RE:	) CASE NO. XX-XXXXX-__
	) Chapter XX
JOHN DOE and JANE DOE,	)
	)
Debtor(s).	)
_____	)
	)
	)
ANY NATIONAL BANK & TRUST,	)
	)
	)
Plaintiff(s),	)
	)
v.	) ADV. NO. XX-XXXX-__
	)
	)
JOHN DOE and JANE DOE,	)
	)
	)
Defendant(s).	)

**FINAL PRETRIAL ORDER**

TRIAL DATE: \_\_\_\_\_, 19\_\_

Date of Conference: \_\_\_\_\_, 19\_\_

Appearances: Sam P. Attorney, Norman, OK, for Plaintiff  
Dave C. Lawyer, Oklahoma City, OK, for Defendant

**I. STIPULATIONS**

- A. All parties are properly before the Court;
- B. The Bankruptcy Court has jurisdiction of the parties and of the subject matter pursuant to 28 U.S.C. § 1334, 28 U.S.C. § 157, and the order of the district court authorizing referral of proceedings to the bankruptcy judges;
- C. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I) and, to the extent the proceeding may be noncore, the parties consent to entry of judgment by the bankruptcy judge.
- D. Venue is proper under 28 U.S.C. §§ 1408-1412;
- E. This action is brought under 11 U.S.C. § 523(a)(2)(B) to determine the dischargeability of a debt;
- F. Facts:
  - 1. Plaintiff is an Oklahoma state chartered banking institution.
  - 2. Defendants are debtors who filed a voluntary joint petition under Chapter 7 of the Bankruptcy Code in the Western District of Oklahoma on January 29, 1993.
  - 3. Defendants are co-makers of a \$50,000 promissory note in favor of Plaintiff, dated October 14, 1991.
  - 4. Plaintiff refinanced the obligation on January 20, 1993, and at the time of filing for bankruptcy, the balance remaining due and owing was \$55,245.
- G. Legal Issue(s):
  - 1. Did Defendants submit a materially false financial statement in connection with their application to refinance the debt owing to Plaintiff?
  - 2. Did Defendants intend to deceive Plaintiff through the representations made in the financial statement?

## **II. CONTENTIONS**

### **A. Plaintiff:**

#### **1. Facts:**

- (a) During the period between the initial loan and refinancing of the note, Defendants' liabilities increased significantly while their assets decreased in number and value.
- (b) Defendants submitted a financial statement to obtain refinancing in which they listed more assets than they possessed and fewer liabilities than they owed.

#### **2. Factual Issues:**

- (a) Did Defendants intentionally misrepresent their financial situation to induce Plaintiff to refinance their note?

### **B. Defendants:**

#### **1. Facts:**

- (a) Defendants did not overstate the number or value of assets and did not omit any liabilities owed in their financial statement with the intent to deceive Plaintiff.
- (b) Defendants were advised by bank officers that the bank required the financial statement primarily for audit purposes and not for the purpose of determining whether to refinance Defendants' note.

#### **2. Factual Issues:**

- (a) To what extent did Plaintiff rely upon the financial statement in deciding whether to refinance Defendants' note?

### III. EXHIBITS

Exhibits not listed will not be admitted by the Court unless good cause is shown and justice demands their admission.

#### A. Plaintiff:

<u>Number</u>	<u>Title</u>	<u>Objection</u>	<u>Evidence Rule Relied Upon</u>
1	1991 Financial Statement	Relevance	402
2	Note dated Oct. 14, 1991	Relevance	402
3	Renewal note dated Jan. 20, 1993	None	
4	1992 Financial Statement	None	

#### B. Defendants:

<u>Number</u>	<u>Title</u>	<u>Objection</u>	<u>Evidence Rule Relied Upon</u>
---------------	--------------	------------------	--------------------------------------

None.

### IV. WITNESSES:

No unlisted witness will be permitted to testify as a witness in chief except by leave of court when justified by exceptional circumstances.

#### A. Plaintiff

<u>Name</u>	<u>Address</u>	<u>Proposed Testimony</u>
John Jones	Norman, OK	Plaintiff's lending procedures

Sam Flake	Moore, OK	Facts surrounding Jefferson Bank loan
Mike Otero	Bethany, OK	Facts surrounding refinancing

B. Defendant

<u>Name</u>	<u>Address</u>	<u>Proposed Testimony</u>
All witnesses listed by Plaintiff		
Debtors	Okla. City, OK	Facts surrounding loans
Jan Tury	Lawton, OK	Lending practices of Plaintiff in 1991-92

V. CHRONOLOGICAL LISTING OF PERTINENT EVENTS:

Attached as a separate appendix is a chart or list setting forth all pertinent events (without explanation) in the chronological order in which the events occurred.

VI. POSSIBILITY OF SETTLEMENT:

Good \_\_\_\_; Fair \_\_\_\_; Poor \_\_\_\_.

VII. ESTIMATED TRIAL TIME:

\_\_\_\_\_.

All parties approve this order and understand and agree that this order supersedes all pleadings and shall not be amended except by order of the Court.

\_\_\_\_\_  
Name  
Address  
Phone Number  
Bar Number  
Counsel for Plaintiff

---

Name  
Address  
Phone Number  
Bar Number  
Counsel for Defendant

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

---

U.S. Bankruptcy Judge

## Appendix to Final Pretrial Order

### SAMPLE CHRONOLOGY

- Oct. 1, 1991 Defendants applied for a loan from Plaintiff and submitted a 1991 Financial Statement.
- Oct. 14, 1991 Defendants executed a note in favor of Plaintiff in the amount of \$50,000, and Plaintiff advanced that amount to Defendants.
- Jan. 14, 1993 Defendants sought to refinance the obligation they owed Plaintiff. Defendants submitted their 1992 Financial Statement prior to the refinancing.
- Jan. 20, 1993 Defendants executed a renewal note in favor of Plaintiff in the amount of \$55,245, for which Plaintiff "rolled over" the balance due on the old note and advanced to Defendants an additional \$2,000.00.
- Jan. 29, 1993 Defendants filed for relief under Chapter 7 of the Bankruptcy Code. The Schedules reflect assets and liabilities different from those set forth in either of Defendants' Financial Statements.
- Mar. 1, 19XX Plaintiff filed this adversary proceeding to except its debt from discharge.